

<b>TOM FERY FARM,</b>	)	<b>AGBCA No. 99-121-2</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Thomas Fery	)	
Tom Fery Farm	)	
P. O. Box 361	)	
Stayton, Oregon 97383	)	
	)	
<b>Representing the Government:</b>	)	
	)	
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Office of the General Counsel	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**March 26, 1999**

**OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK**

This appeal arises under Contract No. 50-04KK-8-3B, Tree Planting, Long Creek Ranger District, Malheur National Forest, Oregon, between Tom Fery Farm of Slayton, Oregon, and the U. S. Department of Agriculture, Forest Service (FS). In this appeal, the contractor requested relief in the sum of \$44,962, as a result of having to plant containerized rather than bare root seedlings and as a result of changes to the planting units identified in the contract.

By letter dated December 23, 1998, Appellant appealed the Contracting Officer's decision of December 17, 1998, denying Appellant's claim. Appellant elected the Board's Expedited Procedure pursuant to Board Rule 12.2(b) which called for a decision within 120 days of election, if possible. The established target date for decision is May 4, 1999. After the filing of pleadings, the Board held a telephone conference on February 10, 1999, for purposes of scheduling and attempting to initiate preliminary discussions in order to narrow the issues and facilitate settlement. At that time, the Board advised the parties of its intention to conduct a hearing by April 15.

On February 26, 1999, the FS filed a Motion For Partial Summary Judgment. The Motion related solely to the containerized planting portion of Appellant's claim.

On March 9, 1999, prior to requiring Appellant to file a response to the FS Motion, the Board held a second telephone conference with the parties. At that time it once again attempted to limit the issues and encourage settlement and further advised the FS that the Board review of the record revealed various disputed factual issues, which would have to be resolved. Thus, the Board indicated that it was not intending to grant the FS Motion. The Board then again discussed various issues and concerns over the parties' positions. The parties indicated that they had been engaging in discussions and while close, had not been able to finalize an agreement. After continuing with further discussion, the parties agreed to consider the matters raised in the conference and continue to attempt to reach a settlement.

Later on March 9, 1999, the Board received by facsimile a Stipulation for Settlement and Dismissal. Under the settlement, the FS agreed to pay Appellant a portion of the claim and in return, Appellant agreed to dismiss the appeal with prejudice and relinquish any and all claims arising or relating to Contract No. 50-04KK-8-3B.

### **DECISION**

In accordance with the stipulation of the parties, the appeal is dismissed with prejudice.

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**HOWARD A. POLLACK**  
Administrative Judge

**Issued at Washington, D. C.**  
**March 26, 1999**